IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 678/2001
(Old No. 3039/1979)

1. Raman Lal (now deceased)
1/1. Smt. Atro Devi
1/2. Arbind Kumar
1/3. Amit Kumara,
2. Manni Lal
3. Chadra Prakash alias Chunna
4. Rajendra Prasad alias Daddu
Sons of Ram Swarup,
R/o Karkhana Bazar, Haldwani
District Nainital ..Defendant/appellants.

Vs.

1. Vidya Ram S/o ShyamLal (now deceased)
1/1. Smt. Shakuntala Devi W/o late Vidya Ram
1/2. Pradeep Kumar @ Guddu S/o late Vidya Ram
1/3. Chandra Prakash Gupta S/o Vidhya Ram
1/4. Km. Santosh D/o
late Vidya Ram ..Plaintiff/Respondents.

Sri P.C. Kandpal, learned counsel for the appellants,.
Sri J.C. Belwal, Advocate for the respondents.

Hon'ble B.C. Kandpal, J.

This is defendants Second Appeal, U/S 100 of the C.P.C., against the order dated 7-8-1979, passed by the III Additional District Judge, Nainital allowing the Civil Appeal No. 80/1979, arising out of Suit No. 216 of 1978, Vidya Ram Vs. Raman Lal etc.

2- Brief facts giving rise to this appeal are that the plaintiff/respondents Vidya Ram (since deceased) obtained a shop on a monthly rent of Rs. 200/- in January, 1977 from the defendant/appellants and he has been carrying on the business of sweat-meat for the two years in the shop and has also made payment of rent upto November, 1978. The defendant/appellant wanted to forcibly eject the plaintiff/ respondent from the shop in dispute, hence the suit No. 216

of 1978 was filed before the Munsif Haldwani. It was also alleged that the shop in suit belongs to the Municipal Board, Haldwani and the defendants/ appellants are the lessees thereof and the plaintiff/respondent is their sub-lessee.

3- The defendants/appellants contested the suit on the ground that the plaintiff/respondents are not in possession over the shop in question and the shop was taken on lease by the grand-father of defendants and they continue to be under the lease of the shop after the death of their father Ram Swarup who died on 22.2.1977. It was also alleged that the monthly rent of the shop was Rs. 250/- per month, which has been paid to the Municipal Board upto March 1979. The defendant Ram Lal was the Karta of the Hindu Joint Family of the defendants.

4- The trial court framed following issue in the case for determination:-

> "Whether plaintiff is in possession as a tenant in the shop in dispute?."

5- The trial Court on assessment of the evidence of parties decided the issue against the plaintiff/respondent and held that he was not in possession as a tenant over the shop in question, therefore, dismissed the suit.

6- Feeling aggrieved, the plaintiff/respondent filed appeal before the first appellate court.

7- The appellate court also framed following issues in appeal for adjudication-

1. Whether plaintiff is in possession over the shop in suit?
2. Whether possession of the plaintiff is as a tenant?
3. Relief?

8- After hearing learned counsel for the parties and perusing the evidence of the parties, the appellate court held that the plaintiff/respondent is the tenant of the defendant/appellants on the disputed shop at a monthly rent of Rs. 200/- and accordingly allowed the appeal and the suit was decreed and restrained the defendant/appellants from interfering in his possession over the shop in question and from dispossessing him except in due course of law.

9- The defendant/appellants against the judgment and decree of the first appellate court, dated 7-8-1979, has preferred this second appeal before the Allahabad High Court, which was subsequently transferred to this court after creation of new State.

10- The High Court at the time of admission admitted the appeal on the following substantial question of law:-

1) Because the suit filed by the plaintiff/respondent was not maintainable in law in the court of Munsif, Haldwani as it related purely to the determination of Contractual Rights.
2) Because there was no issue regarding the payment of rent nor the parties were asked to lead evidence on that question. The court below as such erred in casually giving a finding on the question of payment of rent without there being material on record.

11- The record reveals that in the written statement, the defendants/appellants denied the possession of the plaintiff/respondent over the shop in question but the

deposition of D.W. 1 – Raman Lal shows that the plaintiff/respondent – Vidya Ram is in possession over the shop in question on 14.01.1979 i.e. w.e.f. January 1977, as in the case of the plaintiff/respondent. The record further reveals that the suit was filed on 09.12.1978 and the Commission was issued who informed both the parties in writing of the date and time of the visit of the spot and the Commissioner thereafter visited the spot found that the plaintiff/respondent – Vidya Ram was in possession and was doing the business outside the shop on the platform. The plaintiff/respondent also opened the two locks of the shop from his own keys and showed to Commissioner utensils and rate list etc. kept in the shop, in order to shows that the shop was being used for preparation of confectionary and sweets.

12- The Commissioner also found the bills of the electricity in the shop. It is worthy to mention here that the defendants/appellants for the reasons best know to them absented themselves at the time of the visit of the Commissioner.

13- An affidavit along with objection was filed by the defendant/appellant – Raman Lal alleging therein that the possession was taken over through the help of the Commissioner by the plaintiff/respondent. Further the Tax Collector (P.W.2) who is an independent witness has found on inspection that Vidya Ram – plaintiff/respondent has carried his sweet meat shop in the premises in question, therefore, under these circumstances, it is quite clear that the plaintiff/respondent has succeeded in establishing the possession since 1977 January and he continues to be in lawful possession on the basis of the original licence w.e.f. 31.08.1977 to 31.03.1978 Ex 1. The statement on oath of the

plaintiff/respondent that the shop in question was let out to him @ Rs. 200/- per month by the defendant/appellant No. 3 Chandra Prakash @ Chunna has not been rebutted by the defendant/appellant – Chandra Prakash @ Chunna and he has not been examined on oath. Further the plaintiff/respondent has deposed on oath that Chandra Prakash @ Chunna – defendant/appellant No. 3, let out the shop to him with the consent of the plaintiff/respondent on 05.01.1977. The factum of possession in in consonance and conformity with this evidence of the contract on tenancy. It is admitted fact that none of the defendants/appellants or their father ever carried on any business in the shop in question as they have alleged it simply to be their godown of crackers but the defendants/appellants could not established this fact that they actually used to the shop in question as a godown for carrying the business of crackers by any cogent or reliable evidence.

14- It is not disputed that Sub-lease can be created by a leessee under the Transfer of Property Act under Section 108(J) and that Rent Control Act does not apply to the present accommodation because it belongs to the Municipal Board. Therefore, the agreement between the defendants/appellants and the plaintiff/respondent with respect to sub-lease is not a contract against public policy or against any law and it also does not defeat the provision of any law.

15- It is, therefore, quite clear that the plaintiff/respondent is in peaceful possession over the shop in question and he cannot be evicted from there except in due course of law.

16- The suit filed by the plaintiff/respondent was very well maintainable in the court of Munsif, Haldwani as it does not relate purely to the determination of Contractual Right. Further it is quite clear from the evidence on record that the shop in question was let out to the plaintiff/respondent @ Rs. 200/- per month by the defendant/appellant No. 3 – Chandra Prakash @ Chunna and the defendants/appellants have not rebutted this statement of the plaintiff/respondent by way of adducing any evidence before the court below.

17- The court below has recorded a finding of fact with regard to this aspect of the matter that the plaintiff/respondent are tenant in the shop in question or the shop in question which was let out to them by the defendants/appellants on sub-tenancy. The finding of fact cannot be interfered with at this stage.

18- With the aforesaid observations, I come the conclusion that this revision lacks merit and is liable to be dismissed.

19- Accordingly, the revision is dismissed. The substantial question of law formulated in the revision are answered against the defendant/appellant.

(B.C. Kandpal, J.)

12.09.2006
ASWAL